



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 14 2003

Jerry Greenwald, Chief Executive Officer
c/o Dennis Rapps, Esq.
Jewish Press
338 Third Avenue
Brooklyn, New York 11215-1897

RE: MUR 5180 (*Jewish Press, Inc.*)

Dear Mr. Greenwald:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, on March 21, 2003, the Federal Election Commission found that there was reason to believe that the *Jewish Press, Inc.* violated 2 U.S.C. § 441b(a), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441b(a) has occurred.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies, if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe the violation has occurred.

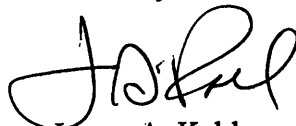
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Abraham Roth
MUR 5180
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Should you have any questions, please contact Danita C. Lee, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kahl", written in a cursive style.

James A. Kahl
Deputy General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Jewish Press, Inc.

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MUR 5180

GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

On March 21, 2003, the Federal Election Commission ("Commission") found reason to believe that the *Jewish Press, Inc.* ("*Jewish Press*") made a prohibited contribution to Dear 2000, Inc. ("Committee") and Abraham Roth, as treasurer, in violation of 2 U.S.C. § 441b(a) by publishing advertisements on behalf of the Committee and not receiving payment for the advertisements. After completing its investigation in this matter, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that the *Jewish Press* violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) by making a prohibited contribution to Dear 2000, Inc. totaling \$52,800.

II. BACKGROUND FACTS

This matter involves a prohibited contribution totaling \$52,800 from the *Jewish Press* to the Committee for the cost of published advertisements. The *Jewish Press*, a New York corporation, published the following eight advertisements on credit for the Committee between August 18, 2000 and November 3, 2000:

	<u>Title of Advertisement</u>	<u>Publication Date</u>	<u>Cost</u>
1.	"Share Your Values"	August 18, 2000	\$ 6,600
2.	"School Vouchers"	August 25, 2000	\$ 6,600

3.	"Vote for Congress"	September 1, 2000	\$ 6,600
4.	"Dear Shares Values"	September 1, 2000	\$ 6,600
5.	"Vouchers"	September 8, 2000	\$ 6,600
6.	"Jerusalem"	September 8, 2000	\$ 6,600
7.	"Dear for Congress"	October 27, 2000	\$ 6,600
8.	"Dear for Congress"	November 3, 2000	<u>\$ 6,600</u>
			\$52,800

As discussed in greater detail below, the Committee had the ability to pay for the advertisements but did not do so. The *Jewish Press* made limited attempts to collect the debt by sending new invoices and making follow-up telephone calls to the Committee. However, the newspaper continued to run advertisements for the Committee even though it had not been paid for earlier published advertisements. Thus, the *Jewish Press* made a prohibited contribution to the Committee because the newspaper only made limited collection attempts and, in light of the Committee's ability to pay, did not vigorously pursue its collection remedies. 11 C.F.R. § 116.4(d)(3).

III. ARGUMENT

It is unlawful for a corporation to make a contribution or expenditure, including any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value, in connection with any election to any political office. 2 U.S.C. § 441b. "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii). In-kind contributions include advertising services, services offered free of charge and services offered at less than the usual and normal charge. *Id.*; see 2 U.S.C. § 431(8)(i). A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person

on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(b). If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. 11 C.F.R. § 100.7(a)(4).

A debt settlement between a political committee and a commercial vendor is commercially reasonable if, *inter alia*, the commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. 11 C.F.R. § 116.4(d)(3). Such remedies may include, but are not limited to, oral and written requests for payment, withholding delivery of additional goods or services until overdue debts are satisfied, imposition of additional charges or penalties for late payment, referral of overdue debts to a commercial debt collection service, and litigation. *Id.*

A creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the debt has been outstanding for at least twenty-four months, the ongoing committee does not have sufficient cash on hand to pay the creditor, the committee has receipts of less than \$1,000 during the previous twenty-four months, and the committee owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt. 11 C.F.R. § 116.8(a). A debt or obligation owed by a candidate or political committee may be totally forgiven provided that the candidate and the political committee have undertaken all reasonable efforts to satisfy the outstanding debt. 11 C.F.R. § 116.4(c)(2). Reasonable efforts include, but are not limited to, engaging in fundraising efforts, reducing overhead and administrative costs, and liquidating assets. *Id.*

The costs associated with the advertisements published by the *Jewish Press* for the Committee constitute a prohibited contribution because the *Jewish Press* did not vigorously pursue its remedies and treat the debt in a commercially reasonable manner. 11 C.F.R.

§ 116.4(b)(2). The newspaper, noting that its debt collection processes and practices are "not all that organized," explained that it occasionally, though rarely, uses collection agencies or the courts to recover debts. Greenwald Affidavit at 2-3 (Jun. 5, 2003). The newspaper explained that sometimes it pursues debtors, *id.* at 3, but it did not provide any information about its standards for determining which debtors it pursues. When the Committee failed to pay for the advertisements, the *Jewish Press* made unspecified telephone calls to the Committee and received assurances from the Committee staff and Noach Dear that it would be paid. The *Jewish Press* also reissued to the Committee full-price invoices canceling discounts it had previously granted for prompt payment and declined to run advertisements for Noach Dear's New York State Senate race in September 2002 unless the advertisements were prepaid.

Although it made some efforts to collect the debt, the *Jewish Press* treated the Committee differently than it would have a nonpolitical debtor. *Id.*; see 11 C.F.R. § 116.4(d)(3). The *Jewish Press* stated that due to Noach Dear's popularity amongst its readership, it would have been counterproductive to its business interests to pursue a lawsuit against the Committee to collect the costs of the advertisements. Greenwald Affidavit at 2 (June 5, 2003). The *Jewish Press* explained that another factor in its decision not to file a lawsuit to collect the debt was because it checked the Committee's "internet filings" and understood that the Committee was judgment proof. *Id.* at 1-2. A review of the Committee's disclosure reports, however, reveals that the Committee had nearly \$87,000 cash on hand on November 27, 2000, and no other debts, and had

at a minimum, approximately \$22,000 cash on hand on December 31, 2002, with no other debts.

Thus, the Committee clearly had the ability to pay for the advertisements.

In addition, the Committee's debt to the *Jewish Press* could not be forgiven because the candidate and Committee did not undertake any efforts to satisfy the debt, the Committee had sufficient cash on hand to pay the debt, the Committee did not owe debts to other creditors, and the *Jewish Press* did not make reasonable collection efforts. 11 C.F.R. § 116.4(b)(2), 11 C.F.R. § 116.4(c)(2) and 11 C.F.R. § 116.8(a)(2). All of the Committee's debt to the *Jewish Press* had been outstanding for a period of at least twenty-four months and the Committee's Reports of Receipts and Disbursements during this period reflected receipts of more than \$1,000. The reports showed:

<u>Reporting Period</u>	<u>Cash on Hand</u>	<u>Debts/Obligations Owed</u>
10/19/00 - 11/27/00	\$86,736	None
11/28/00 - 12/31/00	\$50,902	None
1/1/01 - 6/30/01	\$47,467	None
7/1/01 - 12/31/01	\$43,901	None
1/1/02 - 6/30/02	\$31,225	None
7/1/02 - 12/31/02	\$22,736	None.

Consequently, the \$52,800 in costs associated with the advertisements published between August 18, 2000 and November 3, 2000, constitute an in-kind contribution from the *Jewish Press* to the Committee. 11 C.F.R. § 100.7(a)(4).

Corporations are prohibited from making contributions in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2. The prohibition on corporate contributions in

connection with any election to federal office is a fundamental restriction on the financing of federal election campaigns. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that the *Jewish Press* violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) by making prohibited contributions to Dear 2000, Inc. totaling \$52,800.

IV. GENERAL COUNSEL'S RECOMMENDATIONS


Find probable cause to believe that the *Jewish Press, Inc.*, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) by making a prohibited contribution to Dear 2000, Inc. and Abraham Roth, as treasurer.

Lawrence H. Norton
General Counsel


11/13/03

Date


BY:



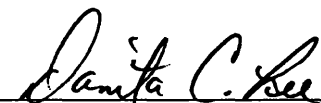
James A. Kahl
Deputy General Counsel



Gregory R. Baker
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Acting Assistant General Counsel



Danita C. Lee
Attorney

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